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CITY OF EMERYVILLE, EMERYVILLE POLICE DEPARTMENT
OFFICER WHITE AND OFFICER ANDRETTICH

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KRISTINA ENNIX SLAUGHTER and MITCHELL
SLAUGHTER) Case No. C08-01552
)
Plaintiffs) DEFENDANTS CITY OF
) EMERYVILLE, EMERYVILLE
) POLICE DEPARTMENT,
) OFFICER WHITE AND OFFICER
) ANDRETICH'S ANSWER TO
) VERIFIED COMPLAINT;
) DEMAND FOR JURY TRIAL
)
vs.)
)
CITY OF EMERYVILLE, EMERYVILLE POLICE)
DEPARTMENT, E. WHITE (#307) and S.)
ANDRETICH (#339), individually and in their official)
capacities; VICTORIA'S SECRET, CLAUDIA)
SOTO, ABERCROMBIE & FITCH, and MELISSA)
BASFIELD,)
)
Defendants.)
)
)

Come now defendants CITY OF EMERYVILLE, EMERYVILLE POLICE DEPARTMENT, OFFICER WHITE AND OFFICER ANDRETICH and in answer to the complaint on file herein admit, and allege as follows:

INTRODUCTION

1.

In answer to the allegations of paragraph 1 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

2.

In answer to the allegations of paragraph 2 of the complaint, these defendants deny both generally and

1 specifically, each and every, all and singular, the allegations contained therein.

2 3.

3 In answer to the allegations of paragraph 3 of the complaint, these defendants have no information or
4 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
5 both generally and specifically, each and every, all and singular, the allegations contained therein.

6 **PARTIES**

7 4.

8 In answer to the allegations of paragraph 4 of the complaint, these defendants have no information or
9 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
10 both generally and specifically, each and every, all and singular, the allegations contained therein.

11 5.

12 In answer to the allegations of paragraph 5 of the complaint, these defendants have no information or
13 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
14 both generally and specifically, each and every, all and singular, the allegations contained therein.

15 6.

16 In answer to the allegations of paragraph 6 of the complaint, admit.

17 7.

18 In answer to the allegations of paragraph 7 of the complaint, admit.

19 8.

20 In answer to the allegations of paragraph 8 of the complaint, admit.

21 9.

22 In answer to the allegations of the first sentence of paragraph 9 of the complaint, admit. In answer to
23 the allegations of the second sentence of paragraph 9 of the complaint, these defendants deny both generally
24 and specifically, each and every, all and singular, the allegations contained therein.

25 //

26 10.

27

28

In answer to the allegations of paragraph 10 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

11.

In answer to the allegations of paragraph 11 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

12.

In answer to the allegations of paragraph 12 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

13.

In answer to the allegations of paragraph 13 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

14.

In answer to the allegations of paragraph 14 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

15.

In answer to the allegations of paragraph 15 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

16.

In answer to the allegations of paragraph 16 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

17.

In answer to the allegations of paragraph 17 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

18.

In answer to the allegations of paragraph 18 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

JURISDICTION AND VENUE

19.

In answer to the allegations of paragraph 19 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

20.

In answer to the allegations of paragraph 20 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

21.

In answer to the allegations of paragraph 21 of the complaint, admit.

11

INTRADISTRICT ASSIGNMENT

22.

In answer to the allegations of paragraph 22 of the complaint, admit.

STATEMENT OF FACTS

23.

In answer to the allegations of paragraph 23 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

24.

In answer to the allegations of paragraph 24 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

1 25.

2 As to the allegations contained in paragraph 25 of the complaint, these defendants admit the allegations
3 contained in paragraph 25, p. 5:19, from "After" to p.5: 20 at "drawn"; in answer to the allegations contained in
4 last sentence of paragraph 25, beginning p.5: 22 and ending at p.5: 23, admit; as to all other allegations
5 contained in paragraph 25 of the complaint, these defendants deny both generally and specifically, each and
6 every, all and singular, the allegations contained therein.

7 26.

8 In answer to the allegations of paragraph 26 of the complaint, these defendants deny both generally and
9 specifically, each and every, all and singular, the allegations contained therein.

10 27.

11 In answer to the allegations of paragraph 27 of the complaint, admit.

12 28.

13 In answer to the allegations of paragraph 28 of the complaint, these defendants have no information or
14 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
15 both generally and specifically, each and every, all and singular, the allegations contained therein.

16 29.

17 In answer to the allegations of paragraph 29 of the complaint, admit.

18 30.

19 In answer to the allegations of the first sentence of paragraph 30, p. 6: 7, of the complaint, these
20 defendants deny both generally and specifically, each and every, all and singular, the allegations contained
21 therein; in answer to the allegations of the second sentence of paragraph 26, line 8, beginning with
22 "KRISTINA", admit.

23 31.

24 In answer to the allegations of paragraph 31 of the complaint, these defendants have no information or
25 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
26 both generally and specifically, each and every, all and singular, the allegations contained therein.

27 32.

28 In answer to the allegations of paragraph 32 of the complaint, admit.

1 33.

2 In answer to the allegations the first of paragraph 33 of the complaint, these defendants have no
3 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
4 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
5 therein.

6 34.

7 In answer to the allegations of the first three sentences of paragraph 34 of the complaint, p. 6:30, these
8 defendants have no information or belief to enable them to answer said allegations, and for that reason and
9 basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the
10 allegations contained therein; in answer to the allegations of the last sentence of paragraph 34, p.6: 25at
11 "Plaintiffs", admit.

12 35.

13 In answer to the allegations of paragraph 35 of the complaint, these defendants have no information or
14 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
15 both generally and specifically, each and every, all and singular, the allegations contained therein.

16 36.

17 In answer to the allegations of paragraph 36 of the complaint, these defendants have no information or
18 belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny
19 both generally and specifically, each and every, all and singular, the allegations contained therein.

20 37.

21 In answer to the allegations of paragraph 37 of the complaint, p.7:10-15, ending at "Emeryville." admit;
22 in answer to the allegations of paragraph 37 of the complaint, p.7:15, beginning at "However," through p.7:20,
23 "store.", these defendants have no information or belief to enable them to answer said allegations, and for that
24 reason and basing their denial on that ground, deny both generally and specifically, each and every, all and
25 singular, the allegations contained therein; in answer to the allegations of paragraph 37 of the complaint, p.7:20,
26 beginning at "Suspects" through p.7:23, "investigation.", these defendants deny both generally and specifically,
27 each and every, all and singular, the allegations contained therein.

28 38.

In answer to the allegations of paragraph 38 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

STATEMENT OF DAMAGES

39.

In answer to the allegations of paragraph 39 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

40.

In answer to the allegations of paragraph 40 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

11

41.

In answer to the allegations of paragraph 41 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

42.

In answer to the allegations of paragraph 42 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

43.

In answer to the allegations of paragraph 43 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983

(Against Defendants WHITE, ANDRETICH and SOTO)

44.

In answer to the allegations of paragraph 44 of the First Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on

1 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
2 therein.

3 45.

4 In answer to the allegations of paragraph 45 of the First Cause of Action, these defendants deny both
5 generally and specifically, each and every, all and singular, the allegations contained therein.

6 46.

7 In answer to the allegations of paragraph 46 of the First Cause of Action, these defendants have no
8 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
9 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
10 therein.

11 47.

12 In answer to the allegations of paragraph 47 of the First Cause of Action, these defendants deny both
13 generally and specifically, each and every, all and singular, the allegations contained therein.

14
15
16 **SECOND CAUSE OF ACTION**
17 42 U.S.C. § 1983

18 (Against Defendants CITY OF EMERYVILLE and
EMERYVILLE POLICE DEPARTMENT)

19 48.

20 In answer to the allegations of paragraph 48 of the Second Cause of Action, these defendants have no
information or belief to enable them to answer said allegations, and for that reason and basing their denial on
21 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
22 therein.

23 49.

24 In answer to the allegations of paragraph 49 of the Second Cause of Action, these defendants deny
25 both generally and specifically, each and every, all and singular, the allegations contained therein.

26 50.

27 In answer to the allegations of paragraph 50 of the Second Cause of Action, these defendants have no
28 information or belief to enable them to answer said allegations, and for that reason and basing their denial on

1 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
2 therein.

3 51.

4 In answer to the allegations of paragraph 51 of the Second Cause of Action, these defendants
5 deny both generally and specifically, each and every, all and singular, the allegations contained therein.

6 52.

7 In answer to the allegations of paragraph 52 of the Second Cause of Action, these defendants deny
8 both generally and specifically, each and every, all and singular, the allegations contained therein.

9 53.

10 In answer to the allegations of paragraph 53 of the Second Cause of Action, these defendants deny
11 both generally and specifically, each and every, all and singular, the allegations contained therein.

12 **THIRD CAUSE OF ACTION**
13 42 U.S.C. § 1983
14 (Against Defendant VICTORIA'S SECRET)

54.

15 In answer to the allegations of paragraph 54 of the Third Cause of Action, these defendants have no
16 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
17 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
18 therein.

19 55.

20 In answer to the allegations of paragraph 55 of the Third Cause of Action, these defendants have no
21 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
22 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
23 therein.

24 56.

25 In answer to the allegations of paragraph 56 of the Third Cause of Action, these defendants have no
26 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
27 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
28 therein.

1 57.

2 In answer to the allegations of paragraph 57 of the Third Cause of Action, these defendants have no
 3 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 4 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 5 therein.

6 58.

7 In answer to the allegations of paragraph 58 of the Third Cause of Action, these defendants have no
 8 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 9 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 10 therein.

11 59.

12 In answer to the allegations of paragraph 59 of the Third Cause of Action, these defendants have no
 13 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 14 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 15 therein.

16 //

17 **FOURTH CAUSE OF ACTION**
 18 **California Government Code § 815.6 - Breach of Mandatory Duty**
 19 (Against Defendants CITY OF EMERYVILLE, EMERYVILLE
 POLICE DEPARTMENT, WHITE and ANDRETICH)
 60.

20 In answer to the allegations of paragraph 60 of the Fourth Cause of Action, these defendants have no
 21 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 22 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 23 therein.

24 61.

25 In answer to the allegations of paragraph 61 of the Fourth Cause of Action, these defendants deny both
 26 generally and specifically, each and every, all and singular, the allegations contained therein.

27 62.

In answer to the allegations of paragraph 62 of the Fourth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

FIFTH CAUSE OF ACTION

California Government Code § 815.2 and *Respondeat Superior Liability*
(Against Defendants CITY OF EMERYVILLE, EMERYVILLE POLICE
DEPARTMENT, VICTORIA'S SECRET and ABERCOMBIE & FITCH)

In answer to the allegations of paragraph 63 of the Fifth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

64.

In answer to the allegations of paragraph 64 of the Fifth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

65.

In answer to the allegations of paragraph 65 of the Fifth Cause of Action, p.12:12, from “On” through “DEPARTMENT,” p.12:14, admit; in answer to the remaining allegations of paragraph 65 of the Fifth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

66.

In answer to the allegations of paragraph 66 of the Fifth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

67.

In answer to the allegations of paragraph 67 of the Fifth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

68.

In answer to the allegations of paragraph 68 of the Fifth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

SIXTH CAUSE OF ACTION

False Imprisonment

(Against Defendants CITY OF EMERYVILLE, EMERYVILLE POLICE DEPARTMENT, WHITE and ANDRETICH)

69.

In answer to the allegations of paragraph 69 of the Sixth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

70.

In answer to the allegations of paragraph 70 of the Sixth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

71.

In answer to the allegations of paragraph 71 of the Sixth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

72.

In answer to the allegations of paragraph 72 of the Sixth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

SEVENTH CAUSE OF ACTION

Assault and Battery

(Against Defendants CITY OF EMERYVILLE, EMERYVILLE POLICE DEPARTMENT, WHITE and ANDRETICH)

73.

In answer to the allegations of paragraph 73 of the Seventh Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

74.

In answer to the allegations of paragraph 74 of the Seventh Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

75.

In answer to the allegations of paragraph 75 of the Seventh Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Against All Defendants)

76.

In answer to the allegations of paragraph 76 of the Eighth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

77.

In answer to the allegations of paragraph 77 of the Eighth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

11

78.

In answer to the allegations of paragraph 78 of the Eighth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

NINTH CAUSE OF ACTION
Invasion of Privacy
(Against All Defendants)

79.

In answer to the allegations of paragraph 79 of the Eighth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

1 80.

2 In answer to the allegations of paragraph 80 of the Ninth Cause of Action, p.14:14, from "Article 1"
 3 through "right." p.14:15, admit; in answer to the remaining allegations of paragraph 80 of the Ninth Cause of
 4 Action, these defendants have no information or belief to enable them to answer said allegations, and for that
 5 reason and basing their denial on that ground, deny both generally and specifically, each and every, all and
 6 singular, the allegations contained therein.

7 81.

8 In answer to the allegations of paragraph 81 of the Ninth Cause of Action, these defendants deny both
 9 generally and specifically, each and every, all and singular, the allegations contained therein.

10 **TENTH CAUSE OF ACTION**
 11 **Violation of California Civil Code § 46 - Slander Per Se**
 12 (Against Defendants VICTORIA'S SECRET, SOTO,
 ABERCROMBIE & FITCH and BASEFIELD)
 13 82.

14 In answer to the allegations of paragraph 82 of the Tenth Cause of Action, these defendants have no
 15 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 16 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 17 therein.

18 //

19 83.

20 In answer to the allegations of paragraph 83 of the Tenth Cause of Action, these defendants have no
 21 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 22 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 23 therein.

24 84.

25 In answer to the allegations of paragraph 84 of the Tenth Cause of Action, these defendants have no
 26 information or belief to enable them to answer said allegations, and for that reason and basing their denial on
 27 that ground, deny both generally and specifically, each and every, all and singular, the allegations contained
 28 therein.

ELEVENTH CAUSE OF ACTION
Violation of California Civil Code § 52.1(b)

(Against Defendants CITY OF EMERYVILLE, EMERYVILLE POLICE
DEPARTMENT, WHITE, ANDRETICH, VICTORIA'S SECRET and SOTO)
85.

In answer to the allegations of paragraph 85 of the Eleventh Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

86.

In answer to the allegations of paragraph 86 of the Eleventh Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

87.

In answer to the allegations of paragraph 87 of the Eleventh Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

88.

In answer to the allegations of paragraph 88 of the Eleventh Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

11

TWELFTH CAUSE OF ACTION
Violation of California Civil Code § 511

(Against Defendants CITY OF EMERYVILLE, EMERYVILLE POLICE
DEPARTMENT,WHITE, ANDRETICH, VICTORIA'S SECRET and SOTO)
89.

In answer to the allegations of paragraph 89 of the Twelfth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

90.

In answer to the allegations of paragraph 90 of the Twelfth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

91.

In answer to the allegations of paragraph 91 of the Twelfth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

THIRTEENTH CAUSE OF ACTION
Negligence and Negligence Per Se
(Against All Defendants)

92.

In answer to the allegations of paragraph 92 of the Thirteenth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

93.

In answer to the allegations of paragraph 93 of the Thirteenth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

94.

In answer to the allegations of paragraph 94 of the Thirteenth Cause of Action, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

95.

In answer to the allegations of paragraph 95 of the Thirteenth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

96.

In answer to the allegations of paragraph 96 of the Thirteenth Cause of Action, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

That plaintiffs assumed the risk of any injuries and/or damages resulting from the matters set forth in said complaint, and that said assumption of risk by plaintiffs was a cause of the injuries and/or damages alleged by plaintiffs, if any there were.

SECOND AFFIRMATIVE DEFENSE

AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

That plaintiffs were themselves negligent and careless in and about the matters and events set forth in the complaint, and that said negligence contributed to their alleged injuries and/or damages. A verdict of the jury in favor of plaintiffs, if any, which may be rendered in this case must therefore be reduced by the percentage that plaintiffs' negligence contributed to the accident and injuries complained of, if any there were.

THIRD AFFIRMATIVE DEFENSE

AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

That the complaint does not state facts sufficient to constitute a cause of action against these answering defendants.

11

FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

Plaintiffs' cause of action is barred by reason of the provisions of California Code of Civil Procedure sections 335.1 and 340.

FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

Plaintiffs failed to mitigate their damages.

SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

Prior to the time when defendants are alleged to have committed the acts complained of, plaintiffs invited, gave permission to, and consented to the acts alleged in the complaint. Each of the acts alleged in the complaint, which acts are expressly denied, was done within the scope of this consent and permission.

SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

Any and all acts or omissions of defendants, their agents and employees, which allegedly caused the injury at the time and place set forth were the result of an exercise of discretion vested in them.

EIGHTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

At all times mentioned in the complaint, defendants were public employees of City of Emeryville and if they performed any of the acts or omissions alleged as the basis of the complaint, the acts or omissions were the result of the exercise of the discretion vested in them. Defendants are therefore immune from liability.

11

NINTH AFFIRMATIVE DEFENSE

AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

At all times mentioned in the complaint, defendants are not liable for any of these acts or omissions alleged in the complaint because the complaint only alleges that defendants are liable based on the acts or omissions of others.

TENTH AFFIRMATIVE DEFENSE

AS AND FOR A TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

At all times mentioned in the complaint, defendants were public employees of City of Emeryville and, as such, are not liable for any of these acts or omissions alleged in the complaint because the complaint only alleges that defendants are liable based on the acts or omissions of others.

ELEVENTH AFFIRMATIVE DEFENSE

AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

1 Defendants allege that plaintiffs failed to set forth the facts sufficient to state a cause of action due to a
 2 failure to comply with claims requirements of the California Government Code §§ 900 et. seq.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
 5 ALLEGE:

6 Any and all mandatory duties imposed upon defendants, their agents and employees, the failure of
 7 which allegedly created the condition complained of, were exercised with reasonable diligence and therefore
 8 defendants are not liable pursuant to Government Code § 815.6.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
 11 ALLEGE:

12 Defendants alleged employees mentioned in plaintiffs' complaint were, at all times, duly qualified,
 13 appointed and acting police officers of City of Emeryville and peace officers of the State of California and in
 14 accordance with the Constitution of the United States and the State of California and the laws of the United
 15 States and the laws of the State of California; and at all times mentioned herein, said officers were engaged in
 16 the performance of their regularly assigned duties within the scope of their duties as peace officers of the City of
 17 Emeryville.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
 20 ALLEGE:

21 These answering defendants acted in good faith and with a reasonable belief that the actions were
 22 lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a breach of
 23 any duty owed to plaintiffs.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
 26 ALLEGE:

27 The acts of these answering defendants were lawful and proper and in all respects was reasonable and
 28 legal.

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEGED:

In this connection probable cause existed to believe that plaintiffs had committed a public offense and, therefore, probable cause existed to detain and/or arrest plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

At all times relevant to this litigation, plaintiffs were subject to restraint as was reasonably necessary for their detention and/or arrest.

11

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

At all times relevant to this litigation, reasonable cause existed to believe that plaintiffs had committed a public offense and, therefore, reasonable force was used to effect plaintiffs' arrest, to prevent escape or to overcome resistance.

NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

At all times relevant to this litigation, plaintiffs consented either expressly or impliedly, to any such acts or conduct as may be shown on the part of these answering defendants.

TWENTIETH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

These answering defendants are immune from liability pursuant to the provisions of §§ 815, 815.2, 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government Code of the State of California.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS
ALLEG:

The facts alleged in the Complaint do not involve any custom, practice, procedure or regulation of defendants, which gives rise to a violation of a constitutional right pursuant to Monell v. New York City Department of Social Services, 436 U.S. 658 (1978).

WHEREFORE, defendants pray that plaintiffs take nothing by way of the complaint on file herein and that defendants have judgment for their costs, attorneys' fees and for such other and further relief as the court deems proper.

11

JURY DEMAND

Defendants hereby demand jury trial in this action.

Dated: April 11, 2008.

LOW, BALL & LYNCH

By _____ /s/ Dale L. Allen, Jr.
DALE L. ALLEN, JR.
Attorneys for Defendants
CITY OF EMERYVILLE, EMERYVILLE POLICE
DEPARTMENT, OFFICER WHITE AND
OFFICER ANDREITCH